

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
HOT SPRINGS DIVISION

PHILLIP GENE BATES

PLAINTIFF

V.

CIVIL NO. 6:19-cv-6009-RTD

SERGEANT LEVI JAMERSON (Garland  
County Sheriff's Office)

DEFENDANT

**ORDER**

The Court has received a report and recommendation (ECF No. 12) from United States Magistrate Judge Barry A. Bryant. Plaintiff filed suit for compensatory and punitive damages against Defendant Jamerson (in his personal and official capacities) claiming his constitutional right to be free from excessive force was violated while in custody at the Garland County Jail. Plaintiff alleges three occasions between September 1, 2016 and October 19, 2016, when he was assaulted by Defendant Jamerson and others. (Compl. 4-6, Jan. 23, 2019, ECF No. 1.) Specifically, Plaintiff claims he was “attacked with brutal force” and “slam[m]ed to the floor and handcuffed then beaten” by Defendant and other unnamed officers. (Compl. 4.) Plaintiff claims he has been mentally affected by Defendant’s acts but does not allege a physical injury from the incident.

Upon review, the Magistrate recommended that Plaintiff’s official capacity claims against Garland County be dismissed without prejudice because Plaintiff has failed to identify any custom or policy of Garland County which violated his constitutional rights. (Report & Recommendation, April 11, 2019, ECF No. 12.) With regard to the claim for compensatory damages against Defendant in his personal capacity, the Magistrate cites *Royal v. Kautzky*, 375 F.3d 720, 723 (8<sup>th</sup> Cir. 2004) and recommends dismissing the claim because Plaintiff may not

seek compensation solely for mental or emotional harm when he does not allege any physical injury. Plaintiff filed timely Objections (ECF No. 13) to the report and recommendation, and the matter is ripe for consideration.

The Court has conducted a de novo review of those portions of the report and recommendation to which Plaintiff has objected. 28 U.S.C. 636(b)(1). Plaintiff's objections offer neither law nor fact requiring departure from the Magistrate's findings. The report and recommendation is proper, contains no clear error, and is ADOPTED IN ITS ENTIRETY.

IT IS THEREFORE ORDERED that Plaintiff's official capacity claim(s) and his personal capacity claim(s) for compensatory damages are DISMISSED WITHOUT PREJUDICE; and

IT IS FURTHER ORDERED that Plaintiff's personal capacity claim(s) for nominal and punitive damages for the alleged assault(s) by Defendant shall remain with the Court for consideration.

SO ORDERED this 10th day of May 2019.

/s/Robert T. Dawson

ROBERT T. DAWSON  
SENIOR U.S. DISTRICT JUDGE